

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

MALCOLM THOMAS §
v. § CIVIL ACTION NO. 5:14cv2
YONNIE JAMES, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Malcolm Thomas, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court referred the case to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

An order adopting a preliminary Report of the Magistrate Judge, granting in part and denying in part a motion to dismiss, was sent to Thomas at his last known address. The order was returned with a notation stating Thomas had been released. The order granting *in forma pauperis* status (docket no. 5) states “the Plaintiff shall notify the Court of any changes of address by filing a written notice of change of address with the Clerk. Failure to file such notice may result in the case being dismissed for want of prosecution.”

The Magistrate Judge issued the subject Report recommending the lawsuit be dismissed without prejudice for failure to prosecute. This Report was returned as undeliverable because Thomas was no longer at the Telford Unit. Court personnel thereupon contacted TDCJ and secured the name of Thomas’ parole officer in Dallas. The parole officer was contacted and provided a current address for Thomas.¹ The present Report recommending dismissal of the lawsuit was sent

¹Thomas himself has not filed a change of address despite the order directing that he do so.

to this address with an acknowledgment card, but the card was not returned. No objections have been received; accordingly, Thomas is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.") It is accordingly

ORDERED the Report of the Magistrate Judge (docket no. 35) is ADOPTED as the opinion of the District Court. It is further

ORDERED the above-styled civil action is DISMISSED without prejudice for failure to prosecute. Finally, it is

ORDERED any and all motions which may be pending in this civil action are hereby DENIED.

So ORDERED and SIGNED this 28th day of December, 2015.

Robert W. Schroeder III
ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE